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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/551,690

02/17/2006

Tero Soukka

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8006

32954 7590 01/30/2009

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EXAMINER

YU, MELANIE J

ART UNIT

PAPER NUMBER

1641

MAIL DATE

DELIVERY MODE

01/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/551,690</p>	<p>Applicant(s) SOUKKA ET AL.</p>	
	<p>Examiner MELANIE YU</p>	<p>Art Unit 1641</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): rejections under 35 USC 112, second paragraph.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 26-38.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Bao-Thuy L. Nguyen/
Primary Examiner, Art Unit 1641

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments regarding the rejection under 35 USC 112, second paragraph are persuasive and the rejection has been withdrawn.

The claims are rejected under 35 USC 112, first paragraph, 35 USC 102(b) and 35 USC 103(a) for the reasons stated in the previous office action dated 3 October 2008.

Regarding the rejection under 35 USC 112, first paragraph, applicant argues that Dps and Dpr protein particles are disclosed beginning at page 19, line 1 of the originally filed application. However, it is noted that the original specification filed on 30 September 2005 contains only 17 pages. The examiner cannot find support for recombinant Dpr or Dps proteins except in the description of the prior art. The examiner cannot find support in the original specification for recombinant Dpr or Dps proteins disclosed as the instant invention.

With respect to the rejection under 35 USC 102(b) applicant argues that the claimed invention teaches production by genetic fusion which produces a continuous polypeptide chain of the subunit in which the first and/or second binding moieties are incorporated and the subunits of apoferritin are identical to one another so the binding moieties are in the same stretches of the polypeptide chain. Applicant argues that Kameda et al. teaches chemically bound binding moieties therefore the binding moieties of the subunits of the ferritin are distributed to random locations of the polypeptide chain susceptible to attachment of the chemical linker which results in great variation of the nanoparticles therefore it is impossible to prepare uniform nanoparticles having identical subunits.

Applicant's argument is not persuasive because the claim is drawn to a nanoparticle and is not drawn to a method of making the particle. Since the product is claimed so long as the required elements are present in the prior art, the prior art reads on the claims. Applicant does not argue any structural differences between the prior art and the instant claims. Furthermore, the claim is drawn to a single nanoparticle and not a plurality of identical nanoparticles. Additionally, since the claimed final product is the same as that taught by the prior art, Kameda et al. reads on the instant claims.